D.B. CIVIL SPECIAL APPEAL(WRIT) NO.270/2006
[UOI & Ors. Vs. Smt. Rama Pandey & Ors.]

Date : 19.05.2006

PRESENT

HON'BLE JUSTICE MR. RAJESH BALIA
HON'BLE JUSTICE MR. R.P.VYAS

Mr. Kuldeep Mathur for the appellant.

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Having heard learned counsel for the appellant we are of the opinion that it is not a fit case in which appeal be entertained.

The incumbent Ratipal Pandey, who was subjected to court martial and was dismissed from service, had filed this petition. He died during the pendency of the writ petition. The principal contention raised by the petitioner's legal representatives was that since there was no compliance of Sub-Rule (3) of Rule 43 of the Air Force Rules, the proceeding of court martial stood vitiated. This contention found favour with the learned Single Judge. Reliance was placed by learned Single Judge on a decision of the Supreme Court in coming to the conclusion that the compliance of Sub-Rule (3) of Rule 43 is mandatory and, therefore, non-compliance of the same being not in dispute, the court martial proceedings stood vitiated.

In this appeal, the only contention raised by the appellant is that the judgment of the Supreme Court is distinguishable on facts inasmuch as in that case the very satisfaction required to sub-rule (1) of Rule 37 of the Army Rules, which is para materia with the corresponding Rule of Air Force Rules, had not been reached and, therefore, any observation made in respect of sub-Rule (3) of Rule 37 cannot be said to be the ratio of the decision.

We are of the opinion that this question need not to be gone into in this case inasmuch as the incumbent has already died, no arrear of emoluments have been directed to be given and breach of Rule is apparent. At best considering the contention of learned counsel, the judgment is in accordance with obiter of Supreme Court. The consequence of the judgment under appeal is that widow might get family pension if she is otherwise entitled with effect from the date of order.

In these circumstances, we are not inclined to interfere with the order impugned in this appeal. The appeal is, therefore, dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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